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BEFORE THE ARIZONA CORPORATION COMMISSION

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IN THE MATTER OF US WEST COMMUNI-
CATIONS, INC.'S COMPLIANCE WITH
§ 271 OF THE TELECOMMUNICATIONS
ACT OF 1996

Docket No. T-00000A-97-238-
-0738

COX ARIZONA TELCOM, LLC'S
COMMENTS ON STAFF'S AUGUST 19, 2003
REPORT ON QWEST'S COMPLIANCE
WITH PUBLIC INTEREST AND TRACK A

Cox Arizona Telcom, LLC ("Cox") submits the following comments on Staff's August 19, 2003 Report on Qwest's Compliance with Public Interest and Track A ("Report"). Generally, Cox supports Staff's concerns about Qwest's Winback Tariff but continues to believe that Qwest simply should withdraw its current Winback Tariff in its entirety. In light of Qwest's still overwhelming market share – particularly in the residential market – Qwest can continue to wield its Winback Tariff with anti-competitive effect. If Qwest desires to have a Winback Tariff, it should file a new tariff and allow the Commission to consider the appropriateness of such a tariff in a careful and deliberate process that also allows interested parties to participate.

In its updated Report, Staff notes (at ¶ 39) that, in place of Staff's earlier recommendation, Qwest should now be required to refile its Winback Tariff with a new provision that prohibits Qwest from using the "Winback" Tariff to win back a lost customer until a minimum of 90 days from the date such customer left Qwest for another service provider.

1 Although Cox agrees that Qwest should refile its Winback Tariff, it has several concerns
2 with Staff's recommendation. First, Qwest still has an enormous market share. Standing
3 alone, the Winback Tariff is simply a tool to increase this already enormous market share.
4 However, a Winback Tariff combined with 271 authority creates an even greater potential
5 for anti-competitive impact. Once Qwest has received its 271 authority, it can aggressively
6 seek to win back lost customers by packaging local and long-distance services to those
7 customers plus offer Winback Tariff incentives.

8 Second, there is no evidence that the 90-day period proposed by Staff is adequate or
9 appropriate. As Staff stated in its proposed Report on Qwest's Compliance with Public
10 Interest and Track A, dated May 2, 2002, "it is much easier for Qwest, with its current
11 market share, to win back former customers with incentives before the customer has an
12 opportunity to experience service from the CLEC for any length of time." A longer delay
13 may provide a customer who switches from Qwest to a CLEC sufficient time to try out and
14 experience the service, billing and customer service of the CLEC. Qwest continues to
15 retain the ability to provide poor number porting or other wholesale service to CLECs in an
16 attempt to have the CLEC's performance look bad in the eyes of the customer. A longer
17 delay would also mitigate the potentially devastating combination of Winback plus 271
18 authority discussed above.

19 Third, there are other legal concerns that arise from the potentially discriminatory
20 effects of a Winback Tariff that this Commission should review. For example, should new
21 Qwest customers who have just moved to Arizona be treated differently from "returning"
22 Qwest customers or current Arizona CLEC customers who are now going to try Qwest for
23 the first time?

24 To allow the Commission to fully consider these issues on a complete and thorough
25 record – which is not the case in this docket – Qwest should be directed to withdraw its
26 current Winback Tariff and refile a new Winback Tariff. The Commission can then treat
27 the Winback Tariff as any other tariff filing, including participation by interested parties.

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1 This process would be similar to the process that took place with respect to Qwest's Local
2 Service Freeze ("LSF") Tariff filing last year. As with the Winback Tariff, the LSF Tariff
3 was rife with anti-competitive potential and, after an evidentiary hearing, the Commission
4 rejected the LSF Tariff as filed. A similar process would allow the Commission to
5 determine whether the proposed Winback Tariff is in the public interest at this time and, if
6 so, what the terms of such a tariff should be.

7 Therefore, Cox requests that the Commission require Qwest to withdraw its Winback
8 Tariff as a condition for finding Qwest's 271 application to be in the public interest.

9
10 RESPECTFULLY SUBMITTED September 2, 2003.

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